TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 559 - SB 1313

March 27, 2015

SUMMARY OF BILL: Authorizes qualified manufacturing taxpayers that meet certain criteria to use a special apportionment formula for calculating net earnings for excise tax purposes. Increases the weight given to the sales factor under the special apportionment formula, from a double-weighted factor under the current statutory apportionment formula, to: a triple-weighted factor for tax years beginning on or after July 1, 2016; an octuple-weighted factor for tax years beginning on or after July 1, 2017; and a single-sales-factor for tax years beginning on or after July 1, 2018.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – $9,046,100/FY16-17
$38,303,000/FY17-18
$78,017,500/FY18-19
$99,775,500/FY19-20 and Subsequent Years

Increase State Expenditures – $110,600/FY16-17

Other Fiscal Impact – Secondary economic impacts may occur as a result of this bill. Due to multiple unknown factors, fiscal impacts directly attributable to such secondary impacts cannot be quantified with reasonable certainty.

Assumptions:

- Under current law, a taxpayer's net earnings are apportioned to this state using a three-factor formula that considers the taxpayer's sales, property and payroll, with the sales factor double-weighted so that the property and payroll represent 50 percent of the apportionment factor and the sales representing the remaining 50 percent.
- The proposed legislation will, for tax years beginning on or after July 1, 2016, authorize qualified manufacturing taxpayers to elect to apportion net earnings to this state for excise tax purposes using a special apportionment formula, which is modified annually by increasing the weight afforded to the sales factor until sales are the sole factor in the formula.
- It is therefore assumed that only those qualified manufacturing taxpayers that would have a decrease in excise tax liability would elect to apportion net earnings pursuant to the formula established by this bill.
- The estimate of the fiscal impact of this bill is based on the Department of Revenue's static analysis of franchise and excise tax returns for tax periods ending in 2013. A

taxpayer's tax liability will be directly impacted by the proposed change to the formula, unless 100 percent of the taxpayer's sales, property, and payroll are located in Tennessee. Further, the taxpayer's tax liability will also be dependent on several other factors, including the amount of loss carryover from prior years and the amount of available tax credits.

- The proposed change to the formula will not have an immediate impact on the amount owed to the state for taxpayers who offset 100 percent of their tax liability as a result of loss carryovers and tax credits, particularly industrial machinery and jobs tax credits. However, since the tax base for these taxpayers, who typically have relatively larger property and payroll factors and relatively smaller sales factors, will be lower as a result of the proposed change, they will have more credits to carryover to future years.
- In general, and not accounting for loss carryovers and tax credits, increasing the sales factor weight will increase the tax liability for multi-state taxpayers where the sales factor is greater than the property and payroll factors, and will decrease the tax liability for multi-state taxpayers where the sales factor is less than the property and payroll factors. As mentioned above, only those multi-state taxpayers that meet the criteria established by this bill whose sales factor is less than the property and payroll factors will elect to use the special apportionment formula, in order to decrease their excise tax liability.
- The Department estimates that 110 taxpayers will meet the criteria established under Tenn. Code Ann. § 67-4-2013(e)(7)(E)(iv)(a) and 65 taxpayers will meet the criteria established under Tenn. Code Ann. § 67-4-2013(e)(7)(E)(iv)(b), in addition to all other established criteria, and will elect to use the special apportionment formula created by this bill.
- Franchise and excise taxpayers are required to make estimated payments if their combined tax liability for the current year exceeds $5,000. Such estimated payments are due on the 15th day of the fourth, sixth, and ninth months of the current tax year, and on the 15th day of the first month of the succeeding year. Each estimated payment is required to be the lesser of: 25 percent of 100 percent of the combined franchise and excise tax shown on the tax return for the preceding year; or 25 percent of the combined liability for the current year.
- Since the estimated payments for taxpayers with a decreased liability are only required to be 25 percent of the combined tax from the current year, it is assumed that these taxpayers will decrease their estimated payments in the first year.
- The tax years of the tax returns were used to estimate the impact of the timing of the estimated payments on tax collections. The resulting decrease in state revenue is estimated to be: $9,046,125 in FY16-17; $38,302,980 in FY17-18; $78,017,517 in FY18-19; and $99,775,484 in FY19-20 and subsequent years.
- The Department reports that there would be a one-time increase in expenditures to the Department of $110,600 in FY16-17, to accomplish all the technology changes required by this bill. Such changes include, but are not limited to, development of new versions of the tax forms, new versions of the keying programs, reformat programs, debit and credit memos, and communication and testing hours in conjunction with the vendors.
- There could be subsequent impacts on state and local government revenue and expenditures as a result of secondary economic impacts prompted by the passage of this

bill. Due to multiple unknown factors, the fiscal impacts attributable to such secondary impacts cannot be quantified with reasonable certainty.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Jeffrey L. Spalding, Executive Director

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